

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA
PHILADELPHIA DIVISION**

JENNIFER SWEDA, BENJAMIN A.
WIGGINS, ROBERT L. YOUNG, FAITH
PICKERING, PUSHKAR SOHONI, AND
REBECCA N. TONER, individually and as
representatives of a class of participants
and beneficiaries on behalf of the University
of Pennsylvania Matching Plan, Basic Plan
and Supplemental Plan,

Plaintiffs,

v.

THE UNIVERSITY OF PENNSYLVANIA,
INVESTMENT COMMITTEE, AND JACK
HEUER,

Defendants.

No. 2:16-cv-04329-GEKP

DECLARATION OF JEROME J. SCHLICHTER

I am the founder and managing partner of the law firm of Schlichter Bogard & Denton, LLP, counsel for Plaintiffs in this case. I am familiar with the facts set forth below and able to testify to them.

1. I received my Bachelor's degree in Business Administration from the University of Illinois in 1969, with honors and was a James Scholar. I received my Juris Doctorate from the University of California at Los Angeles (UCLA) Law School in 1972, where I was an Associate Editor of UCLA Law Review. I am licensed to practice law in the states of Illinois, Missouri, and California and am admitted to practice before the Supreme Court of the United States, the Third,

Fifth, Seventh, Eighth and Ninth Circuit Courts of Appeals and numerous U.S. District Courts. I have also been an Adjunct Professor teaching trial practice at Washington University School of Law, and repeatedly selected by my peers for the list of The Best Lawyers in America.

2. Through over 40 years of practice, I have handled, on behalf of plaintiffs, substantial personal injury, civil rights class actions, mass torts and class action fiduciary breach litigation under the Employee Retirement Income Security Act (ERISA), on behalf of participants in large 401(k) plans. In 2007, I was ranked number 3 in a list of the 100 most influential people nationally in the 401(k) industry in the industry publication *401(k) Wire*. I have also been named on the list numerous times in subsequent years. I have also spoken on ERISA litigation breach of fiduciary duty claims at national ERISA seminars as well as other national bar seminars.

3. Beginning in 2005, my firm and I began thoroughly investigating industry practices in large 401(k) plans, and identifying potential claims on behalf of employees and retirees who rely on such plans for their retirement security.

4. After more than a year and a half of investigation of the industry, in September 2006, my firm began pursuing class actions on behalf of 401(k) employees' and retirees' alleging breaches of fiduciary duties under ERISA based on excessive fees, conflicts of interests and prohibited transactions. At the time these cases were filed, no such cases had not been pursued either by other private lawyers

or the United States Department of Labor, which is responsible for enforcing ERISA.

5. After close to a decade of handling excessive 401(k) fee cases, my firm and I began investigating similar claims for excessive fees and imprudent investments involving large 403(b) plans sponsored by private universities. This investigation was extensive, lasting well over one year prior to the filing of a 403(b) university plan lawsuit. My firm and I thoroughly researched legal and factual issues concerning 403(b) plans in general, as well as conducted specific analyses pertaining to each 403(b) plan under investigation. We also were assisted by experienced industry professionals knowledgeable of prudent fiduciary practices regarding 403(b) plans, the market rate for 403(b) plan services, and other issues pertaining to the administration of 403(b) plans.

6. Beginning in August 2016, after more than one year of diligently investigating potential fiduciary breach claims involving 403(b) plans, my firm expanded its national ERISA practice by filing excessive 403(b) fee cases against private universities. These lawsuits alleged fiduciary breaches in 403(b) plans similar to the 401(k) excessive fee cases being handled by my firm. This lawsuit was one of a number of lawsuits that were filed in 2016 alleging breaches of fiduciary duty and prohibited transactions concerning excessive fees charged to 403(b) plan participants and imprudent investments included in their plans.

7. No law firm had ever brought an excessive 401(k) or 403(b) case before my firm did, and no other law firm has brought the number of cases our firm has brought or committed the resources my firm has committed to them.

8. Since 2006, my firm has filed over 30 ERISA class actions alleging excessive fees in large 401(k) and 403(b) plans. These cases have been filed in judicial districts throughout the United States, including districts within the First, Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth, Ninth, Tenth, and Eleventh Circuits.

9. In each of the above cases in which the issue of class counsel was decided, the court appointed my firm as class counsel—a total of 34 cases, including the following: *Munro v. University of Southern California*, No. 16-6191, 2019 WL 7842551 (C.D. Cal. Dec. 20, 2019); *Vellali v. Yale Univ.*, 333 F.R.D. 10 (D. Conn. 2019); *Kelly v. Johns Hopkins Univ.*, No. 16-2835, Doc. 87 (D. Md. Aug. 16, 2019); *Bell v. Pension Cmte. of ATH Holding Co.*, No. 15-2062, Doc. 347 (S.D.Ind. Jan. 24, 2019); *Cunningham v. Cornell Univ.*, No. 16-6525, 2019 WL 275827 (S.D.N.Y. Jan. 22, 2019); *Cassell v. Vanderbilt Univ.*, No. 16-2086, 2018 WL 5264640 (M.D.Tenn. Oct. 23, 2018); *Cates v. Trustees of Columbia Univ.*, No. 16-6524, Doc. 218 (S.D.N.Y. Nov. 15, 2018); *Henderson v. Emory Univ.*, No. 16-2920, 2018 WL 6332343 (N.D.Ga. Sept. 13, 2018); *Tracey v. MIT*, No. 16-11620, 2018 WL 5114167 (D.Mass. Oct. 19, 2018); *Ramsey v. Philips North America*, No. 18-1099, Doc. 19 (S.D. Ill. June 12, 2018); *Sacerdote v. New York University*, No. 16-6284, 2018 2018 WL 840364, *4 (S.D.N.Y. Feb. 13, 2018); *Clark v. Duke Univ.*, No. 16-1044, 2018 WL 1801946 (M.D.N.C. Apr. 13, 2018); *Ramos v. Banner Health*, No. 15-2556, Doc. 296 (D.Colo.

Mar. 23, 2018); *Troudt v. Oracle Corp.*, No. 16-175, 2018 WL 637462 (D.Colo. Jan. 30, 2018); *Pledger v. Reliance Trust*, No. 15-4444, Doc. 101 (N.D.Ga. Nov. 7, 2017); *Marshall v. Northrop Grumman Corp.*, No. 16-6794, Doc. 130 (C.D.Cal. Nov. 3, 2017); *Sims v. BB&T Corp.*, No. 15-732, 2017 WL 3730552 (M.D.N.C. Aug. 28, 2017); *Gordan v. Massachusetts Mutual Life Insurance Co.*, No. 13-30184, Doc. 112 (D.Mass. June 22, 2016); *Kruger v. Novant Health*, No. 14-208, Doc. 53 (M.D.N.C. May 17, 2016); *Krueger v. Ameriprise Financial, Inc.*, 304 F.R.D. 559 (D.Minn. 2014); *Abbott v. Lockheed Martin Corp.*, 286 F.R.D. 388 (S.D.Ill. 2012), and *Abbott*, No. 06-701, Doc. 403 (S.D.Ill. Aug. 1, 2014); *Beesley v. Int'l Paper Co.*, No. 06-703, Doc. 240 (S.D.Ill. Sept. 30, 2008), and Doc. 543 (S.D.Ill. Oct. 10, 2013); *Nolte v. Cigna Corp.*, No. 07-2046, 2013 WL 3586645 (C.D.Ill. July 3, 2013); *Spano v. Boeing Co.*, 294 F.R.D. 114 (S.D.Ill. 2013); *George v. Kraft Foods Global Inc.*, No. 08-3799, 2012 U.S.Dist.LEXIS 26536 (N.D.Ill. Feb. 29, 2012)(*George II*); *In re Northrop Grumman Corp. ERISA Litig.*, No. 06-6213, 2011 WL 3205264 (C.D.Cal. Mar. 29, 2011); *Will v. General Dynamics Corp.*, No. 06-698, 2010 U.S.Dist.LEXIS 95630 (S.D.Ill. Nov. 22, 2010); *Martin v. Caterpillar Inc.*, No. 07-1009, Doc. 173 (C.D.Ill. April 21, 2010); *Tibble v. Edison Int'l*, No. 07-5359, 2009 WL 6764541 (C.D.Cal. June 30, 2009); *George v. Kraft Foods Global Inc.*, 251 F.R.D. 338 (N.D.Ill. 2008)(*George I*); *Taylor v. United Tech. Corp.*, No. 06-1494, 2008 U.S.Dist.LEXIS 43655 (D.Conn. June 3, 2008); *Kanawi v. Bechtel Corp.*, 254 F.R.D. 102 (N.D.Cal. 2008); *Tussey v. ABB Inc.*, No. 06-4305, 2007 WL 4289694 (W.D.Mo. Dec. 3, 2007);

Loomis v. Exelon Corp., No. 06-4900, 2007 WL 2060799 (N.D.Ill. June 26, 2007); *Will v. General Dynamics Corp.*, No. 06-698, Doc. 243 (S.D. Ill. Aug. 9, 2010).

10. As of this time, very few law firms nationally have brought similar cases, and no other law firm has brought as many cases, or devoted the level of resources to pursuing similar cases. Schlichter Bogard & Denton litigated the first full trial of a 401(k) excessive fee case, resulting in a judgment of \$36.9 million for the plaintiffs that was affirmed in part by the Eighth Circuit. *Tussey v. ABB, Inc.*, No. 06-4305, 2012 U.S.Dist.LEXIS 45240 (W.D. Mo. Mar. 31, 2012), *aff'd* in part, *rev'd* in part, 746 F.3d 327 (8th Cir. 2014). As the court noted in *Tussey*, “[i]t is well established that complex ERISA litigation involves a national standard and specialized expertise. Plaintiffs’ attorneys are clearly experts in ERISA litigation.” *Tussey v. ABB, Inc.*, No. 06-4305, 2012 U.S.Dist.LEXIS 157428, 9–10 (W.D. Mo. Nov. 2, 2012)(citations omitted).

11. These cases require an up-front commitment of tremendous time and resources. For example, in *Tussey*, my firm advanced over \$2 million in out-of-pocket costs, mostly expert witness fees, and carried those costs for roughly a decade prior to reimbursement.

12. Schlichter Bogard & Denton has obtained monetary settlements on behalf of 401(k) and 403(b) plan participants in numerous cases, as well as substantial and valuable affirmative relief. Some of these settlements include: *Tracey v. Massachusetts Institute of Technology*, No. 16-11620 (D. Mass.); *Kelly v. Johns Hopkins University*, No. 16-2835 (D. Md.); *Abbott v. Lockheed Martin Corp.*, No. 06-

701 (S.D. Ill.); *Spano v. Boeing Co.*, No. 06-743 (S.D. Ill.); *Gordan v. Mass. Mutual Life Insurance Co.*, No. 13-30184 (D. Mass.); *Kruger v. Novant Health, Inc.*, No. 14-208 (M.D.N.C); *Krueger v. Ameriprise Financial, Inc.*, No. 11-2781 (D. Minn.); *Kanawi. v. Bechtel Corp.*, No. 06-5566 (N.D. Cal.); *Beesley v. Int'l Paper Co.*, No. 06-703 (S.D. Ill.); *Will v. General Dynamics Corp.*, No. 06-698 (S.D. Ill.); *Nolte v. Cigna Corp.*, No. 07-2046 (C.D. Ill); *George v. Kraft Foods Global, Inc.*, Nos. 07-1713 & 08-3799 (N.D. Ill.); and *Martin v. Caterpillar, Inc.*, No. 07-1009 (C.D. Ill.). No other firm can match Schlichter Bogard & Denton's track record of success in ERISA excessive fee litigation.

13. In many of these cases, settlements were reached only after years of litigation after Schlichter Bogard & Denton conducted extensive discovery, defeated motions to dismiss and for summary judgment, obtained class certification, and, in some, handled one or more interlocutory appeals. In *Spano v. Boeing Co.*, No. 06-743 (S.D.Ill.), filed September 28, 2006, a provisional settlement was reached on the day that trial was scheduled to commence, August 26, 2015, after nine years of litigation, including an interlocutory appeal to the Seventh Circuit, 633 F.3d 574. Similarly, in *Abbott v. Lockheed Martin Corp.*, No. 06-701 (S.D.Ill.), filed September 11, 2006, the parties reached a settlement on December 14, 2014, the day before trial, after over eight years of litigation and two interlocutory class certification appeals, including Schlichter Bogard & Denton successfully obtaining reversal of a denial of class certification, 725 F.3d 803 (7th Cir. 2013), and a petition for writ of certiorari that the firm successfully opposed.

14. Several cases that Schlichter Bogard & Denton filed in 2006 or 2007 were litigated for a decade or longer, and the firm devoted all necessary resources to prosecuting the claims until their conclusion.

15. In *In re Northrop Grumman Corp. ERISA Litig.*, No. 06-6213 (C.D. Cal.), which was filed in 2006, Schlichter Bogard & Denton successfully pursued an interlocutory appeal of denial of class certification, and obtained class certification on remand from the Ninth Circuit. *Grabek v. Northrop Grumman Corp.*, 346 Fed. Appx. 151, 153 (9th Cir. 2009); *In re Northrop Grumman Corp. ERISA Litig.*, No. 06-6213, Doc. 421, 2011 U.S. Dist. LEXIS 94451 (C.D. Cal. Mar. 29, 2011). After trial commenced in March 2017, the parties agreed to a settlement including \$16.75 million in monetary relief, which the Court has approved. Doc. 772 at 2:24–3:7, 4:1–7 [ECF pages]; Doc. 804.

16. In *Tibble v. Edison Int'l*, No. 07-5359 (C.D. Cal.), after partial summary judgment for the defendants and a partial judgment for the plaintiffs at trial, the parties cross-appealed to the Ninth Circuit, which affirmed the district court in all respects, 729 F.3d 1110 (9th Cir. 2013). Schlichter Bogard & Denton successfully petitioned the Supreme Court for a writ of certiorari on the issue of whether ERISA's six-year statute of limitations bars a claim that the fiduciary breached its ongoing duty to remove imprudent investments more than six years after the funds were first included in the Plan. This was the first 401(k) excessive fee case the Supreme Court ever took. Numerous amici supported the plaintiffs, including the United States Solicitor General, AARP, and the Pension Rights Center. The

Supreme Court ruled in favor of plaintiffs unanimously 9–0, and remanded for further proceedings. *Tibble v. Edison Int’l*, 135 S. Ct. 1823, 1829 (2015). On December 16, 2016, the Ninth Circuit, sitting en banc, vacated the district court’s statute of limitations ruling as to funds added to the Plan before 2001 and remanded for trial. *Tibble v. Edison Int’l*, 843 F.3d 1187 (9th Cir. 2016). On August 16, 2017, the district court entered a second judgment for the plaintiffs. *Tibble v. Edison Int’l*, No. 07-5359, 2017 U.S. Dist. LEXIS 130806 (C.D. Cal. Aug. 16, 2017).

17. In *Tussey v. ABB, Inc.*, No. 06-4305, following the month long trial in 2010 and the district court’s judgment, 2012 U.S. Dist. LEXIS 45240 (W.D. Mo. Mar. 31, 2012), the Eighth Circuit affirmed in part, reversed in part, and remanded for further proceedings on one of the plaintiff’s claims, 746 F.3d 327 (8th Cir. 2014). On March 9, 2017, the plaintiffs prevailed on a second appeal to the Eighth Circuit, which affirmed the district court’s finding that the fiduciary breached its duties and remanded for the district court to determine an award of damages. *Tussey v. ABB, Inc.*, 850 F.3d 951 (8th Cir. 2017). The action was finally resolved in 2019 after roughly 12 years of litigation.

18. In short, Schlichter Bogard & Denton has demonstrated its commitment to devoting all necessary resources to pursuing ERISA fiduciary breach claims on behalf of defined contribution plan participants and will do the same if appointed class counsel in this case.

19. Based on handling numerous ERISA excessive fee class actions, Schlichter Bogard & Denton has extensive experience handling the complex nuances present

in all phases of these claims, including the pleading stage, discovery, class certification, dispositive motions, trial, and appeals.

20. Prior to filing this action, the firm conducted an extensive investigation into potential claims on behalf of the participants in the University of Pennsylvania Matching Plan. Schlichter Bogard and Denton obtained documents from public sources, such as Forms 5500 and communications to Plan participants. The firm thoroughly analyzed factual issues pertaining to the participants' potential claims, including a review of the Plan's investment options, performance analysis, calculations of fees paid to service providers, comparisons of the Plan's fees to market rates for the same services, comparison of the Plan's fees and investments to other large 401(k) plans, and determining estimates of losses to the Plan.

21. Schlichter Bogard and Denton also extensively researched anticipated litigation issues and the status of evolving issues in ERISA and class action law in the Third Circuit and nationally.

22. The firm's expertise in successfully handling similar cases has been noted by numerous federal judges. On November 3, 2016, Judge Michael Ponsor of the United States District Court for the District of Massachusetts found that by securing a \$30.9 million settlement, Schlichter Bogard & Denton had achieved an "outstanding result for the class," and "demonstrated extraordinary resourcefulness, skill, efficiency and determination." *Gordan v. Mass Mutual Life Ins., Co.*, No. 14-30184, Doc. 144 at 5 (D. Mass. Nov. 3, 2016).

23. In *Beesley v. International Paper*, a similar ERISA excessive fee case that resulted in a settlement of \$30 million plus substantial affirmative relief following seven years of litigation, Judge David Herndon observed: “Litigating this case against formidable defendants and their sophisticated attorneys required Class Counsel to demonstrate extraordinary skill and determination. Schlichter Bogard & Denton and lead attorney Jerome Schlichter’s diligence and perseverance, while risking vast amounts of time and money, reflect the finest attributes of a private attorney general.” *Beesley v. Int’l Paper Co.*, No. 06-703-DRH, 2014 U.S.Dist.LEXIS 12037, 8 (S.D. Ill. Jan. 31, 2014).

24. In *Will v. General Dynamics*, another ERISA excessive fee case that settled for \$16.5 million plus significant affirmative relief after four years of litigation, U.S. District Judge Patrick Murphy found that litigating the case and achieving a successful result for the class “required Class Counsel to be of the highest caliber and committed to the interests of the participants and beneficiaries of the General Dynamics 401(k) Plans.” *Will v. General Dynamics Corp.*, No. 06-698-GPM, 2010 U.S.Dist.LEXIS 123349, at 9 (S.D. Ill. Nov. 22, 2010).

25. In connection with approving a settlement reached after six plus years of litigation that included a monetary recovery of \$35 million and “powerful affirmative relief” in the form of “market-priced recordkeeping services, state-of-the-art fee and expense disclosures to participants; and other steps to control investment expenses,” U.S. District Judge Harold Baker stated that Schlichter Bogard & Denton is the “preeminent firm in 401(k) fee litigation” and has

“persevered in the face of the enormous risks of representing employees and retirees in this area.” *Nolte v. Cigna Corp.*, No. 07-2046, Doc. 413 at 1, 5 (C.D.Ill. Oct. 15, 2013).

26. In *Abbott v. Lockheed Martin Corp.*, which resulted, after eight plus years of litigation, in a settlement that included \$62 million in monetary relief as well as substantial affirmative relief, Chief Judge Michael J. Reagan observed that “Mr. Schlichter and the firm of Schlichter Bogard & Denton have demonstrated its well-earned reputation as a pioneer and the leader in the field” of 401(k) plan excessive fee litigation. *Abbott v. Lockheed Martin Corp.*, No. 06-701, 2015 U.S.Dist.LEXIS 93206, 4–5 (S.D. Ill. July 17, 2015).

27. In awarding attorney fees after the month-long trial in *Tussey v. ABB, Inc.*, *supra*, Judge Nanette Laughrey found that “Plaintiffs’ attorneys are clearly experts in ERISA litigation.” 2012 U.S.Dist.LEXIS 157428 at 10. On remand from the Eighth Circuit, Judge Laughrey further found that as a result of Plaintiffs’ counsel pursuing the case, the litigation had “clarified ERISA standards in the context of investment fees” and “educated plan administrators, the Department of Labor, the courts and retirement plan participants about the importance of monitoring recordkeeping fees and separating a fiduciary’s corporate interest from its fiduciary obligations. *Tussey v. ABB, Inc.*, No. 06-4305, 2015 U.S.Dist.LEXIS 164818, 7–8 (W.D.Mo. Dec. 9, 2015).

28. In approving a settlement including \$32 million plus significant affirmative relief, Chief Judge William Osteen in *Kruger v. Novant Health, Inc.*, No. 14-208,

Doc. 61, at 7–8 (M.D.N.C. Sept. 29, 2016) found that “Class Counsel’s efforts have not only resulted in a significant monetary award to the class but have also brought improvement to the manner in which the Plans are operated and managed which will result in participants and retirees receiving significant savings[.]”

29. In addition to ERISA class actions, I and my firm have handled many other class action cases. Examples of other class actions I have successfully handled include: *Brown v. Terminal Railroad Association*, a race discrimination case in the Southern District of Illinois on behalf of all African-American and Hispanic employees at a railroad; *Mister v. Illinois Central Gulf Railroad*, 832 F.2d 1427 (7th Cir. 1987), a failure-to-hire class action brought on behalf of hundreds of African-American applicants from East St. Louis, Illinois at a major railroad which was tried to conclusion and successfully appealed to the Seventh Circuit Court of Appeals and finally concluded with more than \$10 million for the class after 12-and-a-half years of litigation; *Wilfong v. Rent-A-Center*, No. 00-680-DRH (S.D. Ill. 2002), a nationwide gender discrimination in employment case on behalf of women, which was successfully settled for \$47 million and substantial affirmative relief to the class of thousands, after defeating the defendant’s attempt to conduct a reverse auction.

30. My work in plaintiffs’ employment discrimination class action cases has been noted by federal judges. U.S. District Judge James Foreman, in the *Mister* case, *supra*, speaking of my efforts, stated:

This Court is unaware of any comparable achievement of public good by a private lawyer in the face of such obstacles and enormous demand of resources and finance.

Order on Attorney's Fees, *Mister v. Illinois Central Gulf R.R.*, No. 81-3006 (S.D. Ill. 1993).

31. District Judge David R. Herndon wrote, regarding my and the firm's handling of the *Wilfong* class action, *supra*:

Class counsel has appeared in this court and has been known to this Court for approximately 20 years. This Court finds that Mr. Schlichter's experience, reputation and ability are of the highest caliber. Mr. Schlichter is known well to the District Court Judge and this Court agrees with Judge Foreman's review of Mr. Schlichter's experience, reputation and ability.

Order on Attorney's Fees, *Wilfong v. Rent-A-Center*, No. 0068-DRH (S.D. Ill. 2002).

Judge Herndon also noted in *Wilfong* that I "performed the role of a 'private attorney general' contemplated under the common fund doctrine, a role viewed with great favor in this Court" and described my action as "an example of advocacy at its highest and noblest purpose." *Id.*

32. In the decades of my private practice, I have never been reprimanded, sanctioned, or otherwise disciplined with respect to any aspect of the practice of law.

33. Attached hereto as Exhibit A is a true and correct copy of Schlichter Bogard and Denton, LLP's firm resume.

I declare, under penalty of perjury, that the foregoing is true and correct to the best of my knowledge and that this declaration was executed this 15th day of September 2020, in St. Louis, Missouri.

/s/ Jerome J. Schlichter
Jerome J. Schlichter

SCHLICHTER BOGARD & DENTON

SELECTED ATTORNEYS BIOGRAPHY

Schlichter Bogard & Denton is a plaintiffs' law firm which represents individuals in personal injury actions, class actions and complex litigation involving pension claims, breaches of fiduciary duties, product liability, and pharmaceutical products. The following is biographical information on selected attorneys in the firm.

JEROME J. SCHLICHTER

Jerome J. Schlichter received his Bachelor's degree in Business Administration from the University of Illinois in 1969, with honors and was a James Scholar. Mr. Schlichter received his Juris Doctorate from the University of California at Los Angeles Law School in 1972, where he was an Associate Editor of UCLA Law Review. Mr. Schlichter is a member of the bar of California, Illinois, and Missouri, and is admitted to practice before the Supreme Court of the United States and numerous federal courts. He has also been an Adjunct Professor teaching a trial class at Washington University Law School.

During his career, Mr. Schlichter has handled on behalf of plaintiffs many substantial personal injury cases, consumer cases, toxic tort cases, and numerous complex, multi-plaintiff cases including mass tort cases and numerous ERISA breach of fiduciary national class actions. He has also held offices in national plaintiffs' lawyer groups. For each year since 2007, he has been listed among the 100 most influential persons nationally in the 401(k) industry in the industry publication 401(k) Wire; he was listed as 3rd most influential in 2007, and 4th most influential in 2015.

Mr. Schlichter is lead attorney on numerous national class action cases involving claims on behalf of employees and retirees of excessive fees and fiduciary breaches in large 401(k) plans. He and the firm are widely acknowledged to have pioneered the area of 401(k) excessive fee litigation and have obtained settlements in ten of those cases. In the case of *Martin v. Caterpillar* a settlement was obtained for the sum of \$16,500,000 plus significant changes in the 401(k) plan. In *Will v. General Dynamics*, a settlement has been reached in the sum of \$15.15 million plus additional non-monetary relief. In *Kanawi v. Bechtel*, the settlement obtained included \$18.5 million as well as additional affirmative relief. In *Beesley v. International Paper*, a settlement was reached for the sum of \$30 Million, as well as significant affirmative relief. In *George v. Kraft Foods*, a settlement was reached for \$9.5 Million plus non-monetary relief. In *Nolte v. Cigna*, a settlement was reached for \$35 Million plus significant changes in the plan to benefit participants. In

Krueger v. Ameriprise, a settlement was reached for \$27.5 Million, and substantial additional changes to the plan. *Abbott v. Lockheed Martin* produced a settlement of \$62 million, the largest sum recovered in a 401k excessive fee case in history, plus significant non-monetary relief. *Spano v. Boeing Co.*, resulted in a \$57 million settlement on behalf of participants in Boeing's 401(k) plan, including significant non-monetary relief. *Kruger v. Novant Health, Inc.*, a \$32 million settlement was reached on behalf of 401(k) plan participants, together with substantial affirmative non-monetary relief. *Gordan v. Mass Mutual Life Inss., Co.*, a settlement was reached for \$30.9 Million with plus additional non-monetary relief.

Mr. Schlichter was the lead attorney for plaintiffs in *Tussey v. ABB, Inc.*, the first full trial for excessive fees in a 401(k) plan, which resulted in a multi-million dollar judgment for participants in ABB's 401(k) Plan, plus substantial reform to the 401k plan.

Mr. Schlichter is also lead attorney in *Tibble v. Edison*, in which he and his firm represent participants in the 401(k) plan of Edison International. In that case, the U.S. Solicitor General, AARP and other organizations supported his firm's position that the case was one of critical importance to all 401(k) participants. In May of 2015, the Supreme Court ruled, unanimously, in favor of the participants in the plan.

Examples of other class cases handled by Mr. Schlichter include: *Brown v. Terminal Railroad Association*, a discrimination case on behalf of African American and Hispanic workers, which was certified as a class, and concluded with a multi-million dollar settlement after more than 5 years of litigation; *Mister v. Illinois Central Gulf Railroad*, 832 F.2d 1427 (7th Cir. 1987), a failure-to-hire suit brought on behalf of hundreds of African-Americans applicants, which was certified, tried and successfully appealed to conclusion and finally settled for more than \$10 million after 12 ½ years of litigation, and *Wilfong v. Rent-A-Center*, No. 00-680-DRH (S.D. Ill. 2002), a nationwide gender discrimination case on behalf of women employees and applicants, which was successfully settled for \$47 million and other relief to the class, after defeating the defendant's attempt to conduct a reverse auction.

Mr. Schlichter has been praised by numerous Federal Judges, retirement plan groups and national experts for his firm's work.

- The AARP Foundation commented that Mr. Schlichter's work in the Bechtel 401(k) fee case was "... truly extraordinary."
- In *Beesley v. International Paper*, an ERISA excessive fee case, U.S. District Judge David Herndon observed: "Litigating this case against formidable defendants and their sophisticated attorneys required Class Counsel to demonstrate extraordinary skill and determination. Schlichter, Bogard & Denton and lead attorney Jerome Schlichter's diligence and perseverance,

while risking vast amounts of time and money, reflect the finest attributes of a private attorney general.” *Beesley v. Int’l Paper Co.*, No. 06-703-DRH, 2014 U.S. Dist. LEXIS 12037, 8 (S.D. Ill. Jan. 31, 2014).

- In *Will v. General Dynamics*, another ERISA excessive fee case, U.S. District Judge Patrick Murphy found that litigating the case and achieving a successful result for the class “required Class Counsel to be of the highest caliber and committed to the interests of the participants and beneficiaries of the General Dynamics 401(k) Plans.” *Will v. General Dynamics Corp.*, No. 06-698-GPM, 2010 U.S. Dist. LEXIS 123349, 9 (S.D. Ill. Nov. 22, 2010).
- U.S. District Judge Harold Baker, in *Nolte v. Cigna*, stated that Schlichter, Bogard & Denton is the “preeminent firm in 401(k) fee litigation” and has “persevered in the face of the enormous risks of representing employees and retirees in this area.” *Nolte v. Cigna Corp.*, Case No. 07-2046, Doc. 413 at 5 (C.D.Ill. Oct. 15, 2013).
- Chief U.S. District Judge Michael J. Reagan observed that “Mr. Schlichter and the firm of Schlichter, Bogard & Denton have demonstrated its well-earned reputation as a pioneer and the leader in the field” of 401(k) plan excessive fee litigation. He added: “Schlichter, Bogard & Denton’s work embodies the finest attributes of a private attorney general, risking significant resources for the good of those saving for their retirement.” *Abbott v. Lockheed Martin Corp.*, No. 06-701, 2015 U.S. Dist. LEXIS 93206, at 4–5 (S.D. Ill. July 17, 2015). Similar remarks were given by U.S. District Judge Nancy J. Rosenstengel in *Spano v. Boeing Co.* noting that for over nine years, Jerome Schlichter and Schlichter, Bogard & Denton have “zealously represented American workers and retirees seeking to improve their retirement plan”. *Spano v. Boeing Co.*, Case No. 06-743, Doc. 587 at 2 (S.D.Ill. Mar. 31, 2015).
- In *Tussey v. ABB, Inc.*, U.S. District Judge Nanette K. Laughrey emphasized the significant contribution Schlichter, Bogard & Denton has made to ERISA litigation, including educating the Department of Labor and courts about the importance of monitoring fees in 401(k) plans.

Of special importance is the significant, national contribution made by the Plaintiffs whose litigation clarified ERISA standards in the context of investment fees. The litigation educated plan administrators, the Department of Labor, the courts and retirement plan participants about the importance of monitoring recordkeeping fees and separating a fiduciary’s corporate interest from its fiduciary obligations.

Tussey v. ABB, Inc., 2015 U.S. Dist. LEXIS 164818 at 7–8 (W.D. Mo. Dec. 9, 2015).

- In *Gordan v. Mass Mutual Life Ins., Co.*, U.S. District Judge Michael Ponsor found that by securing a \$30.9 million settlement, Schlichter, Bogard & Denton had achieved an “outstanding result for the class,” and “demonstrated

extraordinary resourcefulness, skill, efficiency and determination.” *Gordan v. Mass Mutual Life Ins., Co.*, No. 14-30184, Doc. 144 at 5 (D. Mass. November 3, 2016).

Widely cited ERISA experts have expressed their opinions that the 401(k) fee cases brought by Mr. Schlichter directly contributed to the development of the U.S. Department of Labor’s regulatory initiatives to improve fee transparency. In total, Schlichter and his firm have been named Class Counsel in fifteen national class actions alleging fiduciary breaches and prohibited transactions involving the 401(k) plans of large companies.

Mr. Schlichter has also spoken on Employee Retirement Income Security Act (“ERISA”) litigation breach of fiduciary duty claims at national ERISA seminars as well as other national bar seminars. Mr. Schlichter has been widely featured and quoted in articles concerning 401(k) fees, appearing in such national publications as the New York Times, Wall Street Journal, USA Today, Bloomberg, Business Week, Reuters, Forbes, Consumer Reports, and the Los Angeles Times.

Mr. Schlichter has been called a “pioneer” in litigation involving excessive fee claims under ERISA by the New York Times (October 16, 2014); “A Lone Ranger of the 401(k)’s” by the New York Times (March 29, 2104); “Public Enemy No. 1 for 401(k) Profiteers” by Investment News (January 26, 2014); “Who Needs Fee Disclosure When You Have Jerry Schlichter” in Fiduciary News (April 7, 2015); “His Impact has been humongous” in reducing 401(k) fees in Reuters (November 5, 2013).

ROGER C. DENTON

Roger C. Denton earned his Bachelor of Art degree from Culver Stockton College in 1978, and his Juris Doctorate from Saint Louis University School of Law in 1982, where he graduated *summa cum laude* and Order of Woolsack. He is a member of the bar of Illinois, Missouri and Wisconsin, and is admitted to practice before the United States Supreme Court. Mr. Denton is also admitted to the United States District Courts for the Southern, Central and Northern Districts of Illinois, the Eastern and Western Districts of Wisconsin, and the Eastern and Western Districts of Missouri.

Mr. Denton has spent his career representing seriously injured individuals and in mass tort claims for work related injuries, and injuries resulting from the use of dangerous products and defective pharmaceutical drugs. He has litigated cases in more than a dozen states, both in state and federal courts, and has a national reputation in the field of FELA litigation with substantial verdicts in multiple jurisdictions. In addition to handling his individual cases and medical monitoring class actions, Mr. Denton is currently serves as co-lead counsel in multiple national multi district litigation cases, including *In re: Pradaxa Products Liability Litigation*,

Liaison Counsel in *In re Yasmin® and Yaz ® (Drospirenone) Marketing, Sales Practices and Products Liability Litigation*, lead counsel in *In re NuvaRing® Products Liability Litigation*. In addition, he has served on national steering committees in *In re Gadolinium-Based Contrast Agents Product Liability Litigation* and *In re E.I. Du Pont De Nemours and Company C-8 Personal Injury Litigation*. Mr. Denton has spoken at national seminars and published articles on mass torts and complex litigation.

NELSON G. WOLFF

Mr. Wolff is a partner in the firm and received his Bachelor of Arts degree in Biology from Emory University in 1988 and his Juris Doctorate from the University of Missouri in 1992. He was a member of the Missouri Law Review and a two-time winner of the National Moot Court Prize for Appellate Advocacy.

He is a member of the bar of Missouri, Illinois, and Arkansas. Mr. Wolff is admitted to practice before the United States Supreme Court, the United States Court of Appeals for the Fifth, Seventh, Eighth, and Tenth Circuits, in the United States District Courts for the Central, Southern, and Northern Districts of Illinois, Eastern District of Missouri, Western District of Kentucky, and the Eastern and Western Districts of Arkansas.

Mr. Wolff currently serves on the Board of Governors of the Missouri Association of Trial Attorneys. He has been selected as a Missouri and Kansas "Super Lawyer" each year since 2005 and has been repeatedly selected for inclusion in The Best Lawyers in America. Mr. Wolff has also had articles published in numerous legal and scientific journals on personal injury subjects and has presented at numerous legal seminars.

In addition, Mr. Wolff has been involved in multiple national class action ERISA cases involving challenges to 401(k) plan fees and expenses and breaches of fiduciary duty. He conducted the trial of *Tibble v. Edison*, a 401k excessive fee case in the Central District of California, a case in which the firm of Schlichter, Bogard & Denton obtained a writ of certiorari in the U.S. Supreme Court, and, in 2015, a unanimous favorable ruling in the U.S. Supreme Court.

KRISTINE K. KRAFT

Kristine K. Kraft is a partner of the firm. She received her Juris Doctorate from the University of Missouri-Kansas City in 1990, graduating with distinction and the honor of the Order of the Bench and Robe. She graduated *cum laude* from Avila College in 1983 with a Bachelor of Arts degree. She specializes in litigating highly complex pharmaceutical cases, mass tort, and complex litigation cases.

She has represented clients throughout the United States, and is a member of the bar of Missouri, Kansas, and Illinois, as well as in numerous Federal courts.

She serves on the Board of Governors for the Missouri Association of Trial Attorneys, and has also been selected for inclusion in the “Honors Edition” of the Cambridge “Who’s Who Among Executive and Professional Women”.

Additionally, Ms. Kraft has been appointed to serve as co-lead counsel and liaison counsel of *In Re NuvaRing® Products Liability Litigation*, a Multi-District Litigation which resulted in a substantial settlement in the U. S. District Court for the Eastern District of Missouri. She also serves on the Science and Discovery Committees for the Multi-District Litigation matters: *In re Yasmin® and Yaz® (Drospirenone) Marketing, Sales Practices and Products Liability Litigation*, *In re Ortho Evra® Products Liability Litigation* and *In re Gadolinium-Based Contrast Agents Product Liability Litigation*.

Ms. Kraft is and has been involved in complex litigation, mass torts, and multi-district litigation.

MICHAEL A. WOLFF

Michael A Wolff is a partner of the firm. He received his Juris Doctor *cum laude* from the University Of Missouri-Columbia in 1990, where he was initiated into the Order of the Coif. He received his Bachelor of Arts *magna cum laude* from Colgate University in 1987, where he was initiated into Phi Beta Kappa. He has extensive experience in Federal and State appellate and trial practice, as well as fiduciary litigation, complex commercial litigation, and 401k excessive fee cases.

Mr. Wolff is a member of the bar of Missouri (1990) and Illinois (1991) and is admitted to practice before the Supreme Court of the United States and many federal courts. Mr. Wolff has successfully briefed and argued numerous dispositive motions and federal appeals in 401k excessive fee litigation.

Mr. Wolff is and has been involved in numerous complex, national ERISA class actions involving 401(k) plans of large employers, including numerous cases resulting in multi-million dollar settlements and substantial non-monetary improvements to the 401k plans.

TROY A. DOLES

Troy Doles is a partner of the firm, and received his Bachelor’s degree from Indiana University in 1992 and his Juris Doctorate from St. Louis University School of Law in 1996. He is a member of the bar of Missouri and Illinois and is admitted to

practice before the Supreme Court of the United States and numerous federal courts.

Mr. Doles has extensive experience in complex class action cases and complex commercial litigation, including Federal Court and Multi-District Litigation cases. He has been deeply involved in numerous class actions on behalf of retirement plan participants, consumers, and health care providers. Mr. Doles has lectured frequently to a variety of associations and conferences including fiduciary groups, national and state medical associations, and bar associations.

Mr. Doles was a member of the trial team in *Tussey v. A.B.B.*, a month-long trial which was the first and is the only full trial of a 401k excessive fee case in history, and which resulted in a favorable multi-million dollar judgment for plaintiffs.

Mr. Doles is and has been involved in numerous complex, national ERISA class actions involving 401(k) plans of large employers, including numerous cases resulting in multi-million dollar settlements and substantial non-monetary improvements to the 401k plans.

HEATHER LEA

Heather Lea is a partner of the firm. She graduated with a Bachelor of Arts degree from Rhodes College in 1994 and with a Juris Doctorate degree from Washington University School of Law in 2000, where she was Order of the Coif, and the Editor-in-Chief of the Washington University Journal of Law and Policy. Ms. Lea is a member of the bar of Illinois and Missouri, and is admitted to practice before the Supreme Court of the United States and numerous federal courts.

Ms. Lea was a judicial law clerk to the Honorable Jeanne E. Scott, United States District Court for the Central District of Illinois and has specialized in ERISA and pension plan litigation for her entire career. She is currently involved in litigating class actions under ERISA for claims of fiduciary breaches involving plans of large employers.

Ms. Lea was a member of the trial team in *Tussey v. A.B.B.*, a month-long trial which was the first and is the only full trial of a 401k excessive fee case in history, and which resulted in a favorable multi-million dollar judgment for plaintiffs.

Ms. Lea is and has been involved in numerous complex, national ERISA class actions involving 401(k) plans of large employers, including numerous cases resulting in multi-million dollar settlements and substantial non-monetary improvements to the 401k plans.

ANDREW D. SCHLICHTER

Andrew Schlichter is a partner of the firm. He graduated with a Bachelor of Arts Degree from Georgetown University cum laude in 2002 and from the University of Michigan Law School cum laude in 2005, where he was Executive Editor of the Michigan Law Review and received the Jason H. Honigman award. He is a member of the bars of New York and Missouri, and is admitted to practice before the Supreme Court of the United States and numerous federal courts. From 2005 to 2006, he served as a law clerk to U.S. District Judge David R. Herndon in East St. Louis, Illinois. Prior to joining Schlichter, Bogard & Denton, LLP, Mr. Schlichter worked for a large New York City law firm where he practiced complex commercial litigation.

Mr. Schlichter has extensive experience in high-stakes litigation. He has represented numerous clients in federal and state securities actions, and has obtained successful results in a broad range of complex matters, including dismissal with prejudice of a \$147 million action asserted in connection with a debt refinancing and dismissal of several significant claims related to a corporate merger. He has also represented clients in regulatory matters and investigations, including investigations related to the collapse of an investment bank's sponsored hedge funds, off-label promotion at a major pharmaceutical company, and a utility's response to Hurricane Sandy.

In his pro bono practice, he has served as Counsel to the New York Chief Judge's Special Commission on the Future of the New York State Courts and in 2013 received a Pro Bono Publico Award from the Legal Aid Society.

Mr. Schlichter represents clients in complex litigation and personal injury litigation. He is involved in complex national ERISA class actions involving 401k plans of large employers, which have resulted in multi-million dollar settlements and substantial non-monetary improvements to the 401(k) plans.

SEAN E. SOYARS

Mr. Soyars is a partner of the firm. He received his Bachelor of Arts from St. Mary's College in 2000. He received his Juris Doctorate in 2004 from Washington University School of Law. He is a member of the bar of Missouri and is admitted to practice before numerous federal courts.

He has extensive experience in appellate advocacy in representing participants in large 401(k) plans, as well as extensive experience working on all aspects of complex, national ERISA class actions involving 401(k) plans of large employers, including numerous cases resulting in multi-million dollar settlements and substantial non-monetary improvements to the 401(k) plans.

KURT C. STRUCKHOFF

Kurt Struckhoff is Counsel in the firm. He graduated with a Bachelor of Science degree in finance and accounting from Saint Louis University in 2006, *summa cum laude*. He received his Juris Doctorate from Saint Louis University School of Law in 2009. He is a member of the bar of Missouri and Illinois and is admitted to practice before the Supreme Court of the United States and numerous federal courts.

Mr. Struckhoff has been with the firm since 2009.

Mr. Struckhoff was a member of the trial team in *Tussey v. A.B.B.*, a month-long trial which was the first and is the only full trial of a 401k excessive fee case in history, and which resulted in a favorable multi-million dollar judgment for plaintiffs.

Mr. Struckhoff is and has been involved in numerous complex, national ERISA class actions involving 401(k) plans of large employers, including numerous cases resulting in multi-million dollar settlements and substantial non-monetary improvements to the 401k plans.

He has worked extensively in complex litigation in areas including ERISA, pension issues, securities fraud and fiduciary liability.

JOEL ROHLF

Joel Rohlf is Counsel in the firm. He graduated with a Bachelor of Arts degree from the University of Iowa with honors and highest distinction. He received his Juris Doctorate from the University of Iowa, College of Law in 2008 with high distinction and order of the coif. He is a member of the bars of Missouri, Illinois, and the District of Columbia and is admitted to practice before several federal courts.

Joel has extensive experience representing clients in high stakes financial litigation. He has successfully represented numerous clients in a broad range of cases, including ERISA, securities, civil RICO, False Claims Act, consumer protection and pharmaceutical matters.

He has also represented pro bono criminal defendants who cannot afford counsel, and has handled cases for the American Civil Liberties Union and handled a case for the National Association of Criminal Defense Lawyers before the United States Supreme Court in *Vermont v. Brillion*, 556 U.S. 81 (2009).

SCOTT APKING

Scott earned his B.A. from The Ohio State University, and an MBA from Webster University. Scott graduated with honors from the University of Missouri School of Law. During law school, Scott co-founded the school's Veterans Clinic, which represents low-income veterans in VA proceedings at all levels, including before the U.S. Court of Appeals for Veterans' Claims and Court of Appeals for Federal Claims. Scott also served as Senior Associate Editor of the Missouri Law Review.

Prior to joining Schlichter, Bogard & Denton, LLP, Scott worked as a litigator for a large law firm in St. Louis. Scott is a veteran of Operation Iraqi Freedom and continues to serve in the United States Army Reserves as a Career Counselor responsible for over 4,000 Soldiers.

Scott represents clients in complex litigation in federal and state courts throughout the country. Scott has a broad range of experience representing clients in high stakes financial litigation, FINRA, consumer protection, and environmental matters.

ALEX BRAITBERG

Alex earned his B.A. from Cornell University, and his Juris Doctorate from Saint Louis University, magna cum laude.

Alex is currently the Chair of the Continuing Legal Education Committee.

Alex represents clients in complex high-stakes cases in courts around the country, focusing his practice on Employee Retirement Income Security Act (ERISA) and pension plan litigation. He has extensive experience in class actions, including fiduciary breach, toxic exposure, product liability and consumer protection cases, and has obtained substantial results for his clients in a broad range of matters.